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October 22, 2001

**VIA COURIER**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
9300 East Hampton Drive  
Capital Heights, MD 20743

**In the Matter of:  
Application of BellSouth Corporation, Pursuant to  
Section 271 of the Telecommunications Act of 1996 to Provide In-Region,  
InterLATA Services in Georgia and Louisiana  
CC Docket No. 01-277**

Dear Ms. Salas:

Enclosed herewith please find an original and two (2) copies, plus a Stamp and Return copy for filing in the above-referenced matter.

If you have any questions regarding this filing, please contact the undersigned.

Sincerely,



Christopher W. Savage

Enclosure

cc: Janice Myles, Common Carrier Bureau (12 copies)  
Qualex International (1 copy)

No. of Copies rec'd 0+2  
List ABCDE

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**RECEIVED**

OCT 22 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:  
Application of BellSouth Corporation, Pursuant to  
Section 271 of the Telecommunications Act of  
1996 to Provide In-Region, InterLATA Services  
in Georgia and Louisiana

CC Docket No. 01-277

**COMMENTS OF THE  
CABLE TELEVISION ASSOCIATION OF GEORGIA**

**1. INTRODUCTION AND SUMMARY.**

The Cable Television Association of Georgia ("CTAG") respectfully urges the Commission to deny BellSouth's application for authority to offer interLATA long distance services in Georgia. As described below, the evidence submitted to the Georgia Public Service Commission ("Georgia PSC") shows that BellSouth's Operations and Support Systems ("OSSs") cannot meet the real-world needs of competing local exchange carriers ("CLECs") in various respects. As a result, the only reasonable conclusion is that BellSouth has failed to meet the "unbundled elements" item in the competitive checklist, 47 U.S.C. § 271(c)(2)(B)(ii).

The Georgia PSC did not directly examine BellSouth's OSSs. Instead, it developed test criteria, then relied on KPMG Consulting ("KPMG") to test BellSouth's performance. KPMG found that BellSouth's OSSs were not up to par in some important respects. Moreover — and more troubling — in many cases, KPMG disregarded the standards that the Georgia PSC had established, and in the face of BellSouth failures, exercised its (supposed) "professional judgment" to conclude that BellSouth performance was nevertheless satisfactory.

CTAG and others pointed these problems out to the Georgia PSC. Unfortunately, as of today, the Georgia PSC has not released an order reflecting its treatment of these issues; all we have to go on is the fact that the Georgia PSC voted to approve recommending that BellSouth's

interLATA authority be granted. As a result, CTAG here summarizes the deficiencies in BellSouth's OSSs, as evidenced by materials from the proceeding before the Georgia PSC. CTAG reserves the right to provide additional comments on this topic when and if the Georgia PSC provides information or analysis addressing these matters.

**2. BELLSOUTH'S ORDERING SYSTEM IS NOT READY TO SUPPORT ROBUST LOCAL EXCHANGE COMPETITION.**

Section 271 requires BellSouth to offer unbundled network elements, including its OSSs, on terms that are just, reasonable, and nondiscriminatory. 47 U.S.C. § 271(c)(2)(B)(ii); 47 U.S.C. § 251(c)(3). KPMG's testing makes clear that this standard has not been met.

KPMG's report to the Georgia PSC shows that BellSouth had not met the standard specified in the Georgia PSC's test plan.<sup>1</sup> Moreover, KPMG found that the problems it uncovered "could have a materially adverse impact on a CLEC's ability to compete effectively using BellSouth's OSS." Tr. 24:13-15. It is impossible to square this damning assessment of BellSouth's OSSs with the conclusion that BellSouth has complied with the checklist.

To illustrate this problem, consider the issue of volume testing, *i.e.*, testing to see whether BellSouth's OSSs relating to order processing could actually handle the kinds of volumes of orders that could reasonably be expected as competition gets underway. *See* Tr. at 207-42 (cross-examination of ENCORE/RSIMMS panel). BellSouth uses a system called "ENCORE" to handle CLEC orders; but it did not even pretend that ENCORE could handle anticipated levels of CLEC ordering volumes. To the contrary, it declared that the ENCORE system could *not* do so, and would likely crash under the strain of being tested. *See* Tr. 212:20-213:12. Yet rather

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<sup>1</sup> *See, e.g.*, Transcript of Hearings, May 8, 2001, Docket No. 8354-U at page 24, lines 1-17. In the remainder of this pleading, the transcript will be cited as Page:line-Page:line, so that the above citation would be "Tr. 24:1-17." Attachment 1 to this filing consists of the transcript of the proceedings before the Georgia PSC just cited.

than admit the obvious — that this situation plainly showed that BellSouth's OSS was *not* adequate for CLEC needs — a means was found to paper over this problem.

Specifically, BellSouth had *another* system running — not actually used by CLECs — called RSIMMS. RSIMMS was a *test environment*. It was similar to ENCORE in terms of the software being run on the system. The key difference was that RSIMMS was built around much more powerful computers than ENCORE. Indeed, the additional central processing units (“CPUs”) and memory capacity of RSIMMS created a situation where that environment was up to 100% more powerful than ENCORE. *See* Tr. 214:11-219:12 (reviewing technical superiority of RSIMMS environment for handling large volumes of orders). The volume tests — critical to determining whether BellSouth's systems could actually handle a substantial number of orders from competitors — were performed not on ENCORE, but instead on RSIMMS. The RSIMMS software, running on computers with souped-up CPUs and memories, apparently passed. But that says nothing about the ability of actual CLECs to actually order services using ENCORE

KPMG's answer to this problem was to speculate that BellSouth could upgrade the ENCORE system to be more like RSIMMS. *See* Tr. 222:11-223:16 (questioning by Commissioner Durden). Such speculations, however, are beside the point. It is of course *possible* that BellSouth could upgrade ENCORE. The point of the Section 271 checklist, however, is not to decide whether it might be possible in the future for a Bell company to meet its requirements; it is to determine whether sufficient evidence has been presented to show that the requirements have been met *now*. BellSouth's OSSs plainly fail this test.<sup>2</sup>

---

<sup>2</sup> In this regard, in computer upgrades as in the rest of life, “there's many a slip 'twixt cup and lip.” While an upgrade of ENCORE might work smoothly, it might not. For example, by the time the upgrade is performed, BellSouth might use a new software release which might introduce new problems. Or, hardware problems might arise with any new equipment that is used.

**3. KPMG EXERCISED ITS SUPPOSED "PROFESSIONAL JUDGMENT" IN A ONE-SIDED MANNER.**

In any number of circumstances, KPMG had to make various judgment calls about particular aspects of the performance of the BellSouth systems under review.<sup>3</sup> Unfortunately, the process by which it reached those judgments undercuts the confidence that this Commission can fairly place in KPMG's overall findings.

The basic problem is this. As far as CTAG can tell, when KPMG found a problem with BellSouth's compliance with some established measure, it seems routinely to have advised BellSouth of the problem and given BellSouth an opportunity to correct it. But when BellSouth's best effort was not good enough to meet one of the compliance standards articulated by the Georgia PSC, KPMG had no process for obtaining CLEC input on the significance of the problem that KPMG had uncovered. *See, e.g.*, Tr. 29:1-4; Tr. 50:6-18. Instead, KPMG purported to rely on its own internal "expertise" in the CLEC business to conclude that the problem was not, in fact, significant.<sup>4</sup> In this regard, it appears that KPMG kept no notes or

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<sup>3</sup> The record contains many references to KPMG's exercise of its "professional judgment." *See, e.g.*, Tr. 21:8 (introduction of the notion); Tr. 28:2-7; Tr. 29:20-30:2 (referencing 19 tests where BellSouth's receipt of a "satisfied" rating was based on "professional judgment" even though BellSouth failed to meet the relevant objective standard); Tr. 157:21-158:16 (CLECs supposedly not harmed by having to coordinate due dates on two different processes to obtain service); Tr. 194:1-25 (various matters).

<sup>4</sup> From a broad policy perspective, the lack of effective and widespread local exchange competition essentially anywhere throughout the country makes it hard to see how KPMG could rationally conclude that any particular ILEC failure to perform would be immaterial to CLECs, since, CTAG submits, KPMG would be hard-pressed to identify a "successful" CLEC that is making real competitive inroads against an ILEC despite the presence of whatever particular non-compliance by the ILEC is under discussion. For example, while New York is often touted as a hotbed of local competition, efforts to recover from the disaster of September 11, 2001 have shown that for all practical purposes, Verizon is the only game in town. *See, e.g.*, S. Young & D. Berman, *Trade Center Attack Highlights Problem In Telecom Sector's Legacy of Monopoly*, WALL ST. J. (Oct 19, 2001), p. 1.

records of the internal KPMG discussions leading to those conclusions. *See, e.g.*, Tr. 29:8-10; Tr. 144:12-20.

For example, in the context of xDSL ordering, it became clear that the systems used by BellSouth's retail operations would report a loop as unsuitable for DSL — even if the loop itself were perfectly qualified in a physical, technical sense — as long as **BellSouth** had not placed a DSLAM in that central office. CLECs were given access to this system, and received the “same” information — *i.e.*, that a loop without a BellSouth DSLAM is “unqualified” for DSL. *See* Tr. 123:15-129:8. The CLECs, if they want to know if the loop is **really** unqualified, have to try to find that out from **another** database — a cumbersome process with additional opportunities for error and delay not present in BellSouth's own operations. Yet KPMG decided that this should be good enough for CLECs. *See id.*

As another example, it was apparent that BellSouth in many cases could not, in a timely manner, bill usage to CLECs for further billing to the CLEC's customers. *See* Tr. 197:16-200:4. It is widely recognized that retail usage charges — message units, intraLATA toll rates, etc. — are priced wildly above cost. Historically, in a monopoly environment, this practice has been justified by using the high profits in usage charges to help defray the cost of loops. In a resale environment, moreover, the high usage rates will be discounted by the appropriate wholesale margin. So it is critically important to CLECs to be able to accurately bill their customers for usage. Yet KPMG — again exercising its “professional judgment” — concluded that it was adequate for BellSouth to forego billing for usage that it did not bill promptly. *See* Tr. 199:1-13. While this decision keeps CLECs from having to pay BellSouth for services that BellSouth's failures prevented the CLECs from re-billing to end users, it does nothing at all to address the lost profits CLECs experience on the “spread” between the wholesale and retail rates.

**4. CONCLUSION.**

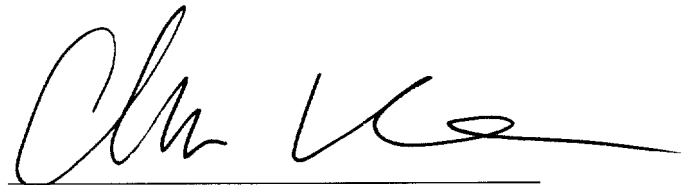
The record before the Georgia PSC made clear that BellSouth has not yet complied with the requirements of Section 251(c)(3) and Section 271(c)(2)(B) with respect to its OSSs. The Georgia PSC voted to recommend approval of BellSouth's application anyway. Its reasons for doing so, however — as well as its responses, if any, to the specific problems with BellSouth's performance identified at the May 2001 hearings on this issue — remain shrouded in mystery.

In these circumstances, CTAG has highlighted in these brief comments some information from the proceedings before the Georgia PSC that demonstrates that BellSouth's OSSs in fact do not meet the statutory standards. As a result, this Commission may not properly approve BellSouth's request for in-region interLATA authority for Georgia.

Respectfully submitted,

**CABLE TELEVISION ASSOCIATION  
OF GEORGIA**

By:



John D. Seiver  
Christopher W. Savage  
**COLE, RAYWID & BRAVERMAN, LLP**  
1919 Pennsylvania Avenue, N.W., Suite 200  
Washington, D.C. 20006  
202-659-9750

Its Attorneys

Dated October 22, 2001

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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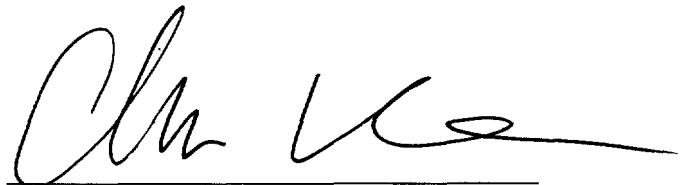
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OF GEORGIA**

By:



John D. Seiver  
Christopher W. Savage  
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1919 Pennsylvania Avenue, N.W., Suite 200  
Washington, D.C. 20006  
202-659-9750

Its Attorneys

Dated October 22, 2001

**ATTACHMENT 1:  
TRANSCRIPT OF HEARING  
BEFORE GEORGIA PSC,  
5/8/01**

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

- - - - -  
In the Matter of: :  
Investigation into Development of :  
Electronic Interfaces for BellSouth's: Docket No. 8354-U  
OPERATIONAL SUPPORT SYSTEMS :  
- - - - -

Hearing Room 110  
244 Washington Street  
Atlanta, Georgia

Tuesday, May 8, 2001

The above-entitled matter came on for hearing  
pursuant to Notice at 10:00 a.m.

BEFORE:

LAUREN MCDONALD, JR., Chairman  
STAN WISE, Vice Chairman  
ROBERT BAKER, Commissioner  
ROBERT DURDEN, Commissioner  
DAVID BURGESS, Commissioner

\* \* \*

Brandenburg & Hasty  
231 Fairview Road  
Ellenwood, Georgia 30294

APPEARANCES:

On behalf of the Commission Staff:

DANIEL WALSH, Attorney  
Assistant Attorney General  
State Law Department  
40 Capitol Square  
Atlanta, Georgia 30334

On behalf of the Consumers' Utility Counsel:

KEALIN CULBREATH, Attorney  
Consumers' Utility Counsel Division  
Balcony Level, 2 MLK Jr. Drive  
Atlanta, Georgia 30334

On behalf of AT&T Communications of the Southern States, Inc.:

SUZANNE OCKLEBERRY, Attorney  
AT&T Communications of the Southern States, Inc.  
1200 Peachtree Street, Suite 8100  
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-and-

THOMAS A. LEMMER, Attorney  
TAMI LYN AZORSKY, Attorney  
McKenna & Cuneo, L.L.P.  
Washington, D.C. 20006-1108  
Denver, Colorado 80202-1370

-and-

TIMOTHY G. BARBER, Attorney  
Womble, Carlyle, Sandridge & Rice  
3300 One First Union Center  
301 South College Street  
Charlotte, North Carolina 28202-6025

On behalf of BellSouth Telecommunications, Inc.:

BENNETT ROSS, Attorney  
FRED MCCALLUM, Attorney  
BellSouth Telecommunications, Inc.  
125 Perimeter Center West, Room 376  
Atlanta, Georgia 30346



APPEARANCES (Continued)

On behalf of Covad Communications Company:

CATHERINE F. BOONE, Attorney  
Covad Communications Company  
Suite 650, 10 Glenlake Parkway  
Atlanta, Georgia 30328

On behalf of Sprint Communications Company, L.P.:

WILLIAM R. ATKINSON, Attorney  
STEPHEN H. KUKTA, Attorney  
Sprint Communications  
3100 Cumberland Circle  
Atlanta, Georgia 30339

On behalf of KPMG Consulting:

WILLIAM B. HILL, JR., Attorney  
Paul, Hasting, Janofsky & Walker L.L.P.  
600 Peachtree Street, Suite 2400  
Atlanta, Georgia 30308-2222

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
David Frey				
Mike Weeks				
By Mr. Barber	--	14	--	--
By Ms. Azorsky	--	51	--	--
By Mr. Ross	--	83	--	--
By Ms. Boone	--	86	--	--
By Mr. Atkinson	--	143	--	--
By Ms. Azorsky	--	159	--	--
By Mr. Lemmer	--	167	--	--
By Mr. Ross	--	179	--	--
By Ms. Boone	--	183	--	--
By Mr. Lemmer	--	185	--	--
By Mr. Lemmer	--	205	--	--
By Mr. Barber	--	208	--	--
By Mr. McCallum	--	230	--	--
By Ms. Boone	--	236	--	--
By Mr. Atkinson	--	238	--	--

<u>EXHIBITS:</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
AT&T:		
1 - October Flow-Through Verification	172	185
2 - October 2000 Flow-Through Verification	175	185

P R O C E E D I N G S

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COMMISSIONER BURGESS: We'll call to order Docket Number 8354-U. This is investigation into the development of electronic interfaces for BellSouth's operational support systems.

At this time we'll have our appearance list. For the Georgia Public Service Commission staff.

(No response.)

COMMISSIONER BURGESS: Somebody. We're getting off to a bad start.

MR. BOND: Tom Bond on behalf of the Commission staff.

COMMISSIONER BURGESS: For the Consumers' Utility Counsel.

MR. CULBREATH: Good morning, Mr. Chairman, my name is Kealin Culbreath, I'm with the CUC.

COMMISSIONER BURGESS: ACI Corporation.

(No response.)

COMMISSIONER BURGESS: Let the record indicate no response.

American Communications Services, Inc.

(No response.)

COMMISSIONER BURGESS: No response.

AT&T Communications.

MS. OCKLEBERRY: Good morning, Mr. Commissioner,

1 Suzie Ockleberry on behalf of AT&T. Also, there will be  
2 Tami Azorsky, Tim Barber and Tom Lemmer on behalf of AT&T.

3 COMMISSIONER BURGESS: Thank you.  
4 BellSouth.

5 MR. ROSS: Good morning, Mr. Chairman, Bennett  
6 Ross on behalf of BellSouth. Also with me today is Fred  
7 McCallum.

8 COMMISSIONER BURGESS: I thought we'd done got rid  
9 of Mr. McCallum. He's been sent back in the state again?

10 MR. MCCALLUM: Just like a bad dream.

11 COMMISSIONER BURGESS: Cable Television  
12 Association of Georgia.

13 MR. MIDDLETON: Mark Middleton for CTAG.

14 COMMISSIONER BURGESS: Globe Telecommunications.

15 (No response.)

16 COMMISSIONER BURGESS: No response.

17 Intermedia Communications.

18 (No response.)

19 COMMISSIONER BURGESS: No response.

20 Interpath Communications.

21 (No response.)

22 COMMISSIONER BURGESS: No response.

23 ITC DeltaCom.

24 (No response.)

25 COMMISSIONER BURGESS: No response.

1 KMC Telecom.  
2 (No response.)  
3 COMMISSIONER BURGESS: No response.  
4 Knology of Georgia.  
5 (No response.)  
6 COMMISSIONER BURGESS: No response.  
7 LCI International.  
8 (No response.)  
9 COMMISSIONER BURGESS: No response.  
10 Low Tech Designs.  
11 (No response.)  
12 COMMISSIONER BURGESS: No response.  
13 MediaOne Telecommunications of Georgia.  
14 (No response.)  
15 COMMISSIONER BURGESS: No response.  
16 Mpower Communications.  
17 (No response.)  
18 COMMISSIONER BURGESS: No response.  
19 NEXTLINK Georgia.  
20 (No response.)  
21 COMMISSIONER BURGESS: No response.  
22 NewSouth Communications.  
23 (No response.)  
24 COMMISSIONER BURGESS: No response.  
25 NorthPoint Communications. I guess there'll be no

1 response there.

2 (No response.)

3 COMMISSIONER BURGESS: Powertel.

4 (No response.)

5 COMMISSIONER BURGESS: No response.

6 Sprint Communications.

7 MR. ATKINSON: Good morning, Mr. Chairman, Bill

8 Atkinson and Steven H. Kukta on behalf of Sprint

9 Communications Company L.P.

10 COMMISSIONER BURGESS: Thank you.

11 U.S. Department of the Army.

12 (No response.)

13 COMMISSIONER BURGESS: No response.

14 MS. BOONE: Mr. Chairman, apparently we're not on

15 the list. Catherine Boone on behalf of COVAD

16 Communications. We are a party to the docket and I'd like

17 to make my appearance. Thank you.

18 COMMISSIONER BURGESS: Thank you, Ms. Boone.

19 Any other parties?

20 I do want to recognize that we have some staff

21 members here from the Florida Public Service Commission and

22 from the Tennessee Public Service Commission that are here

23 with us this morning. And I would just like for the record

24 if they would just come up to the podium and introduce

25 themselves at this time.

1 MS. HARDY: Lisa Hardy from Florida Public Service  
2 Commission.

3 MR. VINSON: Carl Vinson, Florida Public Service  
4 Commission.

5 MR. REED: Arnold Reed from the Tennessee  
6 Regulatory Authority.

7 MR. BENNETT: Jerry Bennett from the Tennessee  
8 Regulatory Authority.

9 COMMISSIONER BURGESS: We're glad to have you with  
10 us this morning.

11 We're going to get ready to proceed. This hearing  
12 is kind of an unusual hearing, we've got a lot of material  
13 to cover today and we've laid out a process to get us where  
14 we need to go. There will be two main witnesses that will  
15 appear on behalf of KPMG this morning and KPMG has brought  
16 along with them all the subject matter experts -- at least a  
17 lot of the subject matter experts -- that worked on this  
18 project. Of course, this project has covered some almost  
19 two years, two years to date that this Commission first  
20 ordered that the third party testing of these BellSouth  
21 operational support systems.

22 So the way that we'll proceed this morning is  
23 we've divided this issue into six different panels and we'll  
24 proceed with one panel at a time. I would ask the attorneys  
25 if they would direct their questions to the two main persons

1 on the panel and those will be David Frey and Mike Weeks.

2 The subject matter experts will be available with  
3 each panel and Mr. Weeks and Mr. Frey will be able to  
4 consult with those subject matter experts and relay  
5 pertinent information back to the attorney in response to  
6 those questions. If we find out that this process is too  
7 cumbersome, we will allow the subject matter experts to  
8 speak themselves. However, before speaking, they must  
9 identify themselves for purposes of the record.

10 But at this time, we're going to proceed with our  
11 first panel and our two principal witnesses. That'll be Mr.  
12 Frey and Mr. Weeks. And our first panel will consist of our  
13 general test management and pre-ordering, ordering and  
14 provisioning.

15 MR. ATKINSON: Before we start this morning, Mr.  
16 Chairman, could I ask a clarifying question about the  
17 presentation of the panels?

18 COMMISSIONER BURGESS: Go right ahead.

19 MR. ATKINSON: I understand that initially the  
20 lawyers' cross examination questions will be directed to Mr  
21 Frey or Mr. Weeks and then if they can't answer, they will  
22 rely on the subject matter experts on the panel. But I just  
23 want to clarify for the record and ask the Chairman -- I  
24 think this is probably the case -- but I want to clarify  
25 that the lawyers, can't they ask direct questions to either



1 Mr. Frey or Mr. Weeks, ask, for instance, Mr. Frey a  
2 question and then if Mr. Frey does not know the answer, he  
3 can defer to Mr. Weeks or defer to a subject matter expert,  
4 as appropriate on the panel.

5 COMMISSIONER BURGESS: That would be appropriate.

6 The idea is to proceed orderly and not to get into a  
7 situation where the record becomes confused because the  
8 court reporter is not aware of who is principally speaking  
9 in that case. But that'll be permissible.

10 MR. ATKINSON: Thank you, Mr. Chairman.

11 COMMISSIONER BURGESS: With that, I'm going to  
12 ask, Mr. Hill, if you would swear the two main panelists as  
13 well as all of the subject matter experts at the same time -  
14 - just swear them all at once.

15 MR. HILL: Will you all please raise your right  
16 hand -- everybody who enjoyed the ride over in the cabs this  
17 morning.

18 (Witnesses sworn en masse.)

19 Whereupon,

20 DAVID FREY

21 MICHAEL WEEKS

22 appeared as witnesses herein, and having been first duly  
23 sworn, were examined and testified as follows:

24 MR. HILL: Mr. Commissioner, before we begin, just  
25 one housekeeping matter and it may have been brought to your